THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.5921 OF 1999

23.03.2006

Between:

Pendurthy Samudram S/o Late Pendurthy Appayya

and another.

… Petitioners

AND

The District Collector, Visakhapatnam, and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.5921 OF 1999

ORDER:

The land admeasuring Acs.4.70 in survey Nos.125/5 and 125/7 situated in Pendurthy village of Pendurthy Mandal in Visakhapatnam District was allegedly assigned to the father of the petitioners, by name, Pendurthy Appayya. It is alleged that after the death of Appayya, the petitioners and their mother inherited the property. Subsequently, they sold the property to three persons under registered sale deed, dated 09.09.1981. In 1983, Tahsildar, Visakhapatnam, cancelled the assignment on the ground that the petitioners alienated the land. The petitioners were also unsuccessful before the appellate authority, i.e., Revenue Divisional Officer. Therefore, they filed W.P.No.12771 of 1983 before this Court. The writ petition was allowed and the matter was remitted to Revenue Divisional Officer for

fresh disposal. Again, on 17.06.1989, the Revenue Divisional Officer, Visakhapatnam passed orders directing the Mandal Revenue Officer to resume the land from the purchasers and restore the same to original assignees. The petitioners allege that thereafter they continued to cultivate the land and requested the Mandal Revenue Officer to reassign the land in their favour.

The petitioners further allege that in November, 1998, respondents 1 and 2 threatened to dispossess them. Therefore, they filed a suit being O.S.No.300 of 1998 on the file of the Court of the Junior Civil Judge, Bheemunipatnam for permanent injunction. They also filed I.A.No.1326 of 1998 seeking ad interim injunction pending disposal of the suit and notice was ordered. In connection with the said proceedings, the petitioners came to know that the Mandal Revenue Officer resumed the land on 04.03.1998 at 4.00 p.m., and is trying to alienate the land to the third respondent. Therefore, the present writ petition is filed seeking a declaration that the proposal to alienate the land is illegal and arbitrary and for a consequential direction to the respondents to reassign the land to the petitioners.

A counter affidavit is filed by the Mandal Revenue Officer, the second respondent herein, wherein it is stated that as the petitioners contravened the provisions of A.P.Assigned Lands (Prohibition of Transfers) Act, 1977 (the Act, for brevity), the assignment made in favour of petitioners' father was cancelled and the land was resumed to the Government as ordered by the Revenue Divisional Officer on 17.06.1989. On verification, it was found that the petitioners sold away the land to third parties and they are not in possession of the land. Therefore, a detailed report was sent to the Collector, who by proceedings, dated 27.07.1998 directed to resume the land. The land was resumed and was handed over to third respondent in accordance with the proceedings of the Collector, dated 17.09.1998 and the third respondent constructed Technology Development Center for training rural women and artisans. It is also alleged that the petitioners are not eligible for restoration of re-assignment.

When the matter was heard on 27.02.2006, the learned Assistant Government Pleader brought to the notice of this Court that the first petitioner is working as Junior Assistant in Junior College, Pendurthy and the second petitioner is working in Port Trust, and as there was no evidence before this Court, the matter was adjourned. On 16.03.2006, the Assistant Government Pleader has produced before this Court a letter bearing Rc.No.1Spl/A/06, dated 01.03.2006, addressed by the Principal of Government Junior College, Pendurthy, to the second respondent to the effect that the second petitioner herein is working as Record Assistant in the Junior College, Pendurthy. It was brought to the notice of this Court that the first petitioner is no more. The matter was again adjourned to enable the learned counsel for the petitioners to take steps. Today, when the matter is called, this Court finds that no steps are taken to bring the legal representatives of the deceased first petitioner. The learned counsel for the petitioner submits that he has no instructions in that regard.

It is no doubt true that when the assigned land is transferred/alienated by the assignee, such a transfer is void. The Mandal Revenue Officer can take necessary action under Section 4 of the Act for resumption. In such an event, it is also the duty

of the Mandal Revenue Officer to restore the land to the original assignee or the legal heirs of the assignee, if it is reasonably possible to do so. This is, however, subject to the legal heirs or for that matter, the assignee satisfying the conditions for assignment. Unless a person is landless and also poor as well as satisfies other conditions of eligibility, it is not necessary to restore the land.

In this case, necessary evidence is placed before this Court to show that the second petitioner is a Government employee working as record assistant in Junior College, Pendurthy. Therefore, he can neither be treated as landless nor poor. Insofar as first petitioner is concerned, the writ petition abates.

For the above reasons, the writ petition is dismissed. No costs.

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(V.V.S.RAO,J)

23.03.2006.

pln